

Natural Gas Transportation: 2018 FERC Rate Cases Are Expected to Raise Novel Issues

Article By:

Levi McAllister

Over a half dozen natural gas rate proceedings are expected to be initiated in 2018, many of which will raise issues such as the impact of the new tax laws on rates and the inclusion of a pipeline modernization tracker in rates.

The dawn of a new year often brings resolutions, optimism, and commitments for improvement. In recent years in the natural gas sector, the dawn of a new year has brought general rate cases initiated by either the Federal Energy Regulatory Commission (FERC) under Section 5 of the Natural Gas Act (NGA) or by pipelines themselves pursuant to Section 4 of the NGA. Such cases generally raise recurring issues familiar to practitioners well-versed in the field of natural gas interstate transport and storage ratemaking. In turn, natural gas pipeline shippers have grown accustomed to analyzing similar issues across multiple proceedings initiated at FERC in recent history.

Unlike prior years, several novel issues are expected to be raised in FERC natural gas rate proceedings in 2018 and beyond. Over a half dozen cases are due to be filed at FERC in 2018, which presents an opportunity for shippers to effectively advocate for themselves with respect to several new issues in numerous proceedings.

2018 Rate Cases

Through a combination of proceedings initiated under Sections 4 and 5 of the NGA, FERC generally is asked to consider the rates of numerous natural gas pipeline and storage providers annually. The volume in any given year varies, which reflects both FERC's determination as to whether to initiate Section 5 proceedings (and if so, how many), and whether pipelines are obligated to file a rate case. The NGA does not require a pipeline to submit to a rate review at any particular interval, unlike the requirement imposed on pipelines providing transport pursuant to Section 311 of the Natural Gas Policy Act. For that reason, pipeline general rate cases often arise as a result of an obligation imposed from a prior settlement proceeding.

By way of example, FERC has initiated 16 investigations into the rates of natural gas pipelines pursuant to Section 5 of the NGA since November 2009.^[1] With respect to proceedings initiated under Section 4 of the NGA, pipelines initiated at least four general rate cases in 2017 alone.^[2]

2018 promises to be an even more active year than 2017. To date, FERC has not initiated any Section 5 proceedings in 2018. Notwithstanding, pipeline customers already anticipate at least seven general rate cases to be filed in 2018.

Due to applicable and currently-effective settlement provisions, rate cases are due to be filed by:

Pipeline	Docket No. - Applicable Comeback
Southern Natural Gas Co., LLC	RP13-886
Saltville Gas Storage Co., LLC	RP14-251
Granite State Gas Transmission, Inc.	RP10-896
Mississippi River Transmission, LLC	RP12-955
Trailblazer Pipeline Co., LLC	RP13-1031
Transcontinental Gas Pipe Line Co., LLC	RP12-993
WBI Energy Transmission, Inc.	RP14-118

In each of these proceedings, the pipeline or storage provider is expected to propose revisions to applicable rates and may also propose revisions to certain terms and conditions of service. The data and assumptions underlying the proposals in each of these proceedings will raise numerous issues requiring FERC consideration and, potentially, litigation between the parties.

Novel 2018 Rate Case Issues

In 2018, the issues that historically arise in pipeline general rate case proceedings are again expected to be germane. Those issues may include, for example, rate base computations, operating and maintenance expenses, depreciation, revenue credits, and the expenses properly included in the appropriate Base Period (as adjusted) when considering the pipeline's revenue requirement proposed in a rate case. It is also common to analyze questions surrounding capital structure when considering questions relating to just and reasonable rates of return. In fact, some pipelines have already taken steps to "preview" issues that may arise in the course of a general rate case through various postings on the pipeline's Electronic Bulletin Board.

However, 2018 also requires pipeline customers to confront novel issues that have historically been subject to dispute in only limited circumstances, if at all. The obligation for customers to consider such novel issues presents opportunity, however, because resolution of the issues may materially and directly impact the rates that customers are assessed.

Three examples of novel issues are discussed below.

Impact of New Tax Legislation

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (the Act) following passage in the House and Senate earlier that week. The Act includes many provisions that would directly and indirectly affect the oil and gas sector. While the effect of the provisions in the Act should be analyzed on a company-specific basis, several provisions of the Act generally impact: (i) the manner in which natural gas pipeline and storage providers compute their federal income taxes; and (ii) the rate at which those entities are taxed.

For example, under the Act, deductions for net interest expense are limited when net interest expense exceeds 30% of adjusted taxable income. The Act limits the deduction for net operating losses to 80% of taxable income, repeals the corporate alternative minimum tax, and includes a five-

year period for 100% expensing (for many assets), followed by a five-year phase down of those provisions. From a tax rate perspective, the Act reduces the corporate federal income tax rate to 21% and individuals generally receive a 20% deduction on certain pass-through income.

Each of these changes, in addition to others set forth in the Act, directly impacts the manner in which a natural gas pipeline or storage provider will compute its federal tax obligations. Familiarity with the Act and its implications on natural gas pipeline tax computations is essential to reliably test the federal income tax assertions and accompanying workpapers that a pipeline will submit in its general rate case. Because a pipeline is allowed to recover its federal (and state) income tax obligations from its customers, it is critical that pipeline customers properly assess the pipeline's federal income tax computations when analyzing the rates a pipeline proposes in upcoming general rate cases.

Treatment of Tax Allowance for Pass-Through Entities

As most industry participants are aware, in the summer of 2016, the DC Circuit directed FERC to clarify its basis for allowing a blanket income tax allowance to be included in the cost-of-service of a pass-through entity whose applicable return on equity (ROE) was computed on a discounted cash flow (DCF) basis. In *United Airlines v. FERC*, the DC Circuit concluded that FERC's policy of granting a tax allowance to pass-through pipelines results in inequitable returns for partners in those pipelines, as compared to shareholders in corporate pipelines. Although FERC issued a Notice of Inquiry (NOI) in December 2016 requesting all industry participants to weigh in on and propose potential solutions to the issues identified by the DC Circuit, FERC has yet to take action on the NOI.

For that reason, pipeline customers in 2018 rate cases should be mindful to consider the implications of a potential FERC decision. To the extent that FERC acts prior to resolution of a case, a proper assessment will be required to ascertain the impact of FERC's decision. Absent any action, customers may well consider advocating for prophylactic language in any negotiated settlement or as a condition of any FERC order. Such was the case in the recently-approved settlement involving FERC's Section 5 investigation into the rates of Wyoming Interstate Company, which concluded with a settlement containing a provision in Article IV to account for a potential FERC issuance in light of *United Airlines*.

Pipeline Modernization Tracker

The degree of evidence a pipeline is required to provide in order to establish a pipeline modernization tracker is also a question that warrants scrutiny by pipeline customers. In an April 2015 Policy Statement, FERC explained that it would permit natural gas pipelines to seek to recover through a surcharge mechanism certain capital expenditures made to modernize pipeline system infrastructure in a manner that enhances system reliability, safety, and regulatory compliance.

A tracker may be approved by FERC following a comprehensive rate review conducted pursuant to Section 4 of the NGA. Although the pipelines due to file cases in 2018 are not required to pursue a modernization tracker, several (or all) of those pipelines may indeed propose a tracker in the course of the general rate case that is to be filed. In recent years, pipelines have become subject to increasing degrees of obligations imposed by the Pipeline and Hazardous Materials Safety Administration (PHMSA). Further, the installation of Administrator Howard Elliott at PHMSA in October 2017 clears the way for the agency to address additional issues that have been pending, which could create further compliance obligations for pipelines and storage providers.

As such, pipeline customers should expect and be prepared to assess a modernization tracker

proposal in one or more 2018 general rate cases. Given the limited precedent available on the issue, working familiarity with the Policy Statement and a thorough analysis of the components included in pipeline proposal is critical to perform the requisite assessment.

Conclusion

2018 promises to be an exciting year in the world of natural gas rate cases. To be sure, new issues are expected to arise and consideration of those issues requires a thorough analysis of the pipeline proposal. A thorough and detailed assessment of the pipeline's proposals combined with a comprehensive understanding of the issues presents pipeline customers with a unique opportunity to secure advantageous rates for the foreseeable future.

[1] Those proceedings involve investigations into the rates of Wyoming Interstate Company (twice), Viking Gas Transmission Company, Tuscarora Gas Transmission Company, Empire Pipeline, Inc., Iroquois Gas Transmission System, LP, Columbia Gulf Transmission, LLC, Natural Gas Pipeline Company of America LLC (twice), ANR Storage Co., Bear Creek Storage Company LLC, MIGC LLC, Kinder Morgan Gas Transmission LLC, Ozark Gas Transmission, L.L.C., Northern Natural Gas Company, and Great Lakes Gas Transmission LP.

[2] Those cases involved Dominion Cove Point LNG, LP, Eastern Shore Natural Gas Company, KO Transmission Company, and Great Lakes Gas Transmission Limited Partnership.

Copyright © 2025 by Morgan, Lewis & Bockius LLP. All Rights Reserved.

National Law Review, Volume VIII, Number 11

Source URL: <https://natlawreview.com/article/natural-gas-transportation-2018-ferc-rate-cases-are-expected-to-raise-novel-issues>